

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 1058 of 1999

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed : NO  
to see the judgements?
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy : NO  
of the judgement?
4. Whether this case involves a substantial question : NO  
of law as to the interpretation of the Constitution  
of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge? : NO

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RAJENDRA @ REAJU UGRANATH CHAUDHARI

Versus

STATE OF GUJARAT

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Appearance:

MR HR PRAJAPATI for Petitioner  
MR SS PATEL AGP for Respondent No. 1, 2, 3

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 04/08/1999

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ORAL JUDGEMENT

Heard the learned advocates for the respective  
parties.

2. The petitioner challenges the order of preventive  
detention dated 24th December, 1998, made by the

Commissioner of Police, Ahmedabad City, under the powers conferred upon him under Sub-section 1 of Section 3 of the Gujarat Prevention of Anti-Social Activities Act, 1985 [hereinafter referred to as, 'the Act'].

3. The petitioner is alleged to be a 'dangerous person' within the meaning of Section 2 (c) of the Act and his activities are found to be prejudicial to the maintenance of 'public order'. Two offences punishable under Chapter XVII of the Indian Penal Code have been registered against the petitioner and are pending investigation. Two individuals have given statements in respect of the incidents that occurred on 13th December, 1998 and 11th December, 1998 respectively disclosing the criminal tendency of the petitioner and its adverse effect on the public order. The said two witnesses were summoned before the detaining authority and the genuineness of the apprehension voiced by them has been verified by the detaining authority himself. The detaining authority in this regard has recorded his subjective satisfaction and has invoked privilege conferred upon him under Section 9 (2) of the Act.

4. Amongst other grounds, it is urged that the detaining authority has relied upon the statements of the witnesses without examining the credibility of the witnesses and the genuineness of the statements given by them. The detaining authority has not recorded his subjective satisfaction in this respect. The subjective satisfaction recorded by the detaining authority is, therefore, vitiated and the continued detention of the petitioner is invalid. It is indisputable that the detaining authority has not recorded his subjective satisfaction in respect of the credibility of the witnesses and the evidence of the statements made therein. In this respect, this court in the matter of Mohamad Sarif @ Kalio Narmohamadsumitbapu Shaikh v. Commissioner of Police, Ahmedabad City [1997 (1) G 1017] has held that, '.....The question which requires consideration in the facts of the present case is as to whether the Detaining Authority had applied its mind to the statements of these witnesses with regard to the incidents while forming an opinion so as to warrant the detention. Mere reproduction of such statements in the body of the order cannot be said to be sufficient so as to show the active application of mind by the Detaining Authority at the time of passing of the order, more particularly, when there is no contemporaneous evidence taken note of and considered by the Detaining Authority.... The Detaining Authority has to apply its mind and such application of mind must be made manifest

in the body of the order itself and in any case when it is alleged that the order had been passed without application of mind, it must be shown before the court by way of filing the affidavit or otherwise on the basis of some contemporaneous evidence and the reasons which can be said to be germane so as to warrant the detention.'

5. In the present case also, no contemporaneous evidence is available on the records. In absence of such material, the subjective satisfaction recorded in respect of the petitioner's activities is vitiated. The continued detention of the petitioner is, therefore, not valid.

6. Petition is, therefore, allowed. The order dated 24th December, 1998; Annexure-A to the petition is quashed and set-aside. Rule is made absolute. The petitioner, unless is required to be detained in some other case, be released forthwith.

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Prakash\*